

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case Number: 13-20568

DONALD RAYMOND CROFT,

Defendant.

_____ /

SENTENCING
BEFORE THE HONORABLE GERALD E. ROSEN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
TUESDAY, SEPTEMBER 16TH, 2014

APPEARANCES:

For the Plaintiff: Matthew A. Roth, Assistant
United States Attorney

For the Defendant: Lawrence B. Shulman, Esq.

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1 Detroit, Michigan

2 Tuesday, September 16th, 2014

3 (At or about 2:20 p.m.)

4 -- --- --

5 THE CLERK: The Court calls United States of
6 America versus Donald Croft, case number 13-20568.

7 THE COURT: Good afternoon.

8 Appearances, please.

9 MR. ROTH: Good afternoon, your Honor.

10 Matthew Roth, on behalf of the United States.

11 Mr. SHULMAN: Good afternoon, your Honor.

12 Lawrence Shulman, on behalf of Mr. Croft.

13 THE COURT: All right. This is a continuation of
14 the sentencing hearing from several weeks ago. The Court
15 after hearing from Mr. Roth and then Mr. Shulman, continued
16 the hearing to allow Mr. Shulman time to review the
17 photographic evidence at issue in the case.

18 Mr. Shulman has advised the Court that there was
19 a potential argument that the statutory mandatory minimum
20 of ten years might not be implicated and that the cross
21 reference might not be applicable here because of the
22 nature of the photographs. The Court wanted to give Mr.
23 Shulman and, of course, Mr. Croft, every opportunity to
24 review the photographs at issue and to make a determination
25 as to whether or not there was a foundation for those

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1 arguments.

2 The Court has received nothing from Mr. Shulman.
3 I have been advised, the clerk was advised by Mr. Roth that
4 Mr. Shulman did have the opportunity to review the
5 photographs in question. So I infer from that that Mr.
6 Shulman now agrees with the Government's position that the
7 cross reference applies.

8 Mr. SHULMAN: Your Honor, no, no, I don't. As a
9 matter of fact, it took a while to --

10 THE COURT: Well, Mr. Shulman, you were instructed
11 very clearly to file objections. I've received no
12 objections.

13 Mr. SHULMAN: I understand, your Honor.

14 THE COURT: Or brief.

15 Mr. SHULMAN: I understand, your Honor. That's
16 entirely my fault. It took some time to set up the review
17 with the Government. I did the review with the Government
18 on August 7th, which was a little more than a month after
19 we were here because it took some time for the Government
20 to go through and compile the universe of photographs.
21 I was over there on August 7th.

22 And, again -- entirely my fault. I've moved
23 offices. There was a problem with the date, but I do have
24 objections to one set of the evidence. We've had some
25 discussions about that, too --

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1 THE COURT: Mr. Shulman, you know, the dog ate my
2 homework excuses, we're long past that.

3 Mr. SHULMAN: I understand.

4 THE COURT: You know, we had a hearing that was
5 set for, what, a month and a half ago now or more. There
6 were no objections filed, not even a pleading indicating
7 that you might have an objection. Nothing filed with
8 Probation. Despite that, I gave you an opportunity to
9 review the evidence out of an abundance of caution to
10 review the evidence, and to file objections. Here we are
11 now, what, almost two months later, and I still haven't
12 gotten anything.

13 Mr. SHULMAN: Your Honor, if I may.

14 What had happened last time was we had talked
15 about having a universe of evidence and being on the same
16 page. As I indicated to the Court, there were thousands of
17 photographs that were compiled. We've gone through them
18 all. When we were here last time I talked about refining it
19 to a particular subset of evidence that the Government was
20 going to rely on. The Government made representation that
21 what they were compiling was a subset, they were reserving
22 the right to bring other evidence up at the sentencing,
23 too, but we were refining the set. That was the reason for
24 the last adjournment.

25 I believe the Court agreed that was justified,

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1 that it was a good reason being on the same page so we can
2 discuss evidence intelligently. Our position all along has
3 been that Mr. Croft admitted to you before the plea that
4 there were items that were on his computer that constitute
5 child pornography. Those items were downloaded from the
6 internet. That was the subject of the plea. We've always
7 indicated that he objected to the characterizations of
8 anything he took as far as photographs as being child
9 pornography and objected to their characterization.

10 THE COURT: So what do you want me to do, Mr.
11 Shulman? Do this on a fly with no evidence?

12 Mr. SHULMAN: No, your Honor.

13 THE COURT: There's been nothing submitted to me
14 whatsoever by you. I have the Government's position which
15 now has been adopted by the Probation Department and
16 incorporated into the Presentence Report.

17 MR. ROTH: The Government has -- and the
18 Government has exhibits that are here. We talked about
19 presenting some exhibits too.

20 THE COURT: Again, do you want me to do this on
21 the fly without having had a chance to prepare?

22 Mr. SHULMAN: No, your Honor. Not at all. In fact,
23 what I would ask for -- I had objections. I can file the
24 objections to the 38 pictures that I'm objecting to today.

25 THE COURT: Well, we're long past -- quite

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1 candidly you were past the time to file objections at the
2 last sentencing hearing. I gave you an extension. You were
3 instructed to file objections and any supporting
4 documentation for those objections.

5 Mr. SHULMAN: The supporting documentation,
6 though, are photographs that are not in my possession
7 because they can't be --

8 THE COURT: You certainly could have referenced
9 those. Mr. Roth I'm sure would have permitted you to file
10 those in camera, perhaps under seal because of the nature
11 of the photographs.

12 Mr. SHULMAN: Well --

13 THE COURT: I'm at a loss, frankly, Mr. Shulman.
14 I'm at a loss.

15 Mr. SHULMAN: What we would ask --

16 THE COURT: The legal issue is clear.

17 Mr. SHULMAN: The legal issue is clear.

18 You know, the Government has prepared an exhibit
19 book with those exhibits.

20 Your Honor, I would ask that you wouldn't hold it
21 against my client. It's entirely --

22 THE COURT: The Court wouldn't hold anything
23 against the client, but I thought I had remedied that by
24 giving you the extension the last time, and making it clear
25 that you were to file objections after you had an

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1 opportunity to review the evidence.

2 Mr. SHULMAN: You did, your Honor. It's entirely
3 my fault.

4 THE COURT: You recognize the disadvantage you
5 place the Court in to say nothing of your client.

6 Mr. SHULMAN: I do, your Honor.

7 THE COURT: And the Government. The Government is
8 entitled to written objections to respond to.

9 Mr. SHULMAN: And our position has been clear,
10 we've talked about this back and forth with the Government.
11 I don't believe there's a debate as to what our position
12 is. It's just that the objection has always been to the
13 photographs that he's alleged to have taken. It was a
14 reason for the plea. It was a reason for discussions to try
15 to narrow the scope of evidence after the last hearing.
16 It's always been -- I agree --

17 THE COURT: So let me ask you a couple of
18 questions. Are you objecting to -- the Government propounds
19 four sets of photographs I believe involving four victims
20 who we will not name by name. On the basis of those four
21 sets of photographs for those victims the Government filed
22 objections indicating that it was the Government's position
23 that the cross reference in 2G2, I believe it was
24 subsection C applies. There was no response by you. Instead
25 at the sentencing hearing you asked for time to look at the

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1 photographs, understand what the universe of the
2 photographs was that the Government was relying on for
3 cross reference. The Probation Officer had accepted the
4 Government's position. So approximately a month and a
5 little more than a week ago you reviewed those photographs
6 as I understand it. What is the basis upon which you are
7 now alleging or arguing I should say that the cross
8 reference does not apply?

9 Mr. SHULMAN: Those photographs do not meet the
10 statutory definition under prohibited material under 2255A.

11 THE COURT: That they are not child pornography?

12 Mr. SHULMAN: Yes.

13 THE COURT: All of the photographs?

14 Mr. SHULMAN: Again, when we talked about being on
15 the same universe, the Government has identified 38 images
16 out of a total that they believe violate the statute, and
17 those 38 images we enter an objection to all 38 images.

18 THE COURT: I'm getting an uncomfortable feeling
19 here, Mr. Shulman, that the Court is being manipulated.

20 Mr. SHULMAN: I don't want to leave that
21 impression. Your Honor, it is entirely my fault. I'm not
22 trying to manipulate the Court and if the Court -- again, I
23 apologize. I would ask then that the Court adjourn -- I
24 don't want the Court to be unprepared. I would submit
25 anything by whatever date the Court orders --

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1 THE COURT: This is sort of the conversation we
2 had at the last hearing.

3 "Manipulated" I'm referring to something slightly
4 different. The manipulation I'm referring to is that I'm
5 concerned that you did not want to file a written record
6 because you have real concerns about the legal basis for
7 your argument. Instead you're throwing the ball in the
8 Court's court to make these determinations without a
9 written record.

10 Mr. SHULMAN: I don't want to leave that
11 impression. It's not true. I do have a record for that,
12 too. Not only would that not be fair -- I wouldn't ask the
13 Court to do that. And I apologize for that impression. I
14 would be perfectly happy to provide that basis. There is a
15 basis.

16 THE COURT: What evidence are you going to present
17 that these -- number one, first, if these 38 photographs
18 are not child pornography, is that what you're alleging?

19 Mr. SHULMAN: Yes.

20 THE COURT: How could your defendant have -- how
21 could Mr. Croft had pled guilty to the crime?

22 Mr. SHULMAN: He didn't plead guilty to that
23 crime. There were two counts here. The first count was
24 receipt. The second count was possession. There were items
25 on the computer that were downloaded from the internet.

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1 We've admitted he submitted as the basis of his plea that
2 some of the images that were downloaded from the internet
3 by him were child pornography. He doesn't object to that.
4 He doesn't dispute that and that was the basis for --

5 THE COURT: And that's the possession.

6 Mr. SHULMAN: Yes, that's the possession. That was
7 the factual basis for the plea that he entered before the
8 Court, that items that he downloaded from the internet
9 constituted child pornography.

10 We indicated at the time of the plea, too, that
11 there was no indication, that what he took, the items he
12 was alleged to have photographed by himself that there's
13 been no admission whatsoever that those constitute child
14 pornography. It's always been our position that they
15 haven't. But as to the items that constituted the factual
16 basis for possession, there was a proper factual basis.
17 Those don't include images that he took. The basis for the
18 cross reference by the Government is images that he's
19 alleged to have taken that are alleged to be child
20 pornography which he's never made an admission to --

21 THE COURT: Well, let's make sure we're all
22 talking about the same cross reference. I think the cross
23 reference we're all referring to is 2G2.2(c)(1); correct?

24 Mr. SHULMAN: Yes.

25 THE COURT: "If the offense involved causing,

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1 transporting, permitting or offering a minor to engage in
2 sexually explicit conduct for the purpose of producing a
3 visual depiction of such conduct apply 2G2.1 (Sexually
4 exploiting a minor by production of sexually explicit
5 visual or printed material...if the resulting offense level
6 is greater than that determined above."

7 The application note to that says,

8 "The cross reference is to be construed broadly
9 to include all instances where the offense involved
10 employing, using, persuading, inducing, enticing, coercing,
11 transporting, permitting a minor to engage in sexually
12 explicit conduct for the purpose of producing any visual
13 depiction of such conduct."

14 Then cross reference is applied; correct?

15 Mr. SHULMAN: Correct.

16 THE COURT: So you are saying that although he
17 possessed child pornography the photos that he took himself
18 were not pornographic, child pornography?

19 Mr. SHULMAN: Were not child pornography under the
20 statute, yes.

21 THE COURT: What evidence am I to look at other
22 than the photos?

23 Mr. SHULMAN: The photograph itself. Also the
24 other piece of evidence that we have because the cross
25 reference also talks about causing for the purpose, and

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1 "for the purpose" implies to intent, if there was other
2 evidence that was seized from Mr. Croft's house including a
3 book that is permitted and is sold across the country here
4 by a photographer by the name of David Hamilton. The name
5 of the book is "The Age of Innocence." We have a copy for
6 the Court's review. It's something that can be purchased in
7 Barnes & Nobles or anywhere else.

8 But the photographs themselves that are in this
9 book are of the nature that -- again, it's open that these
10 were sold is evidence of Mr. Croft's intent as well.

11 THE COURT: So what you're telling me is he was
12 trying to walk up to the line or his intent was to only
13 walk up to the line, established by this book or whatever
14 other material is out but not cross the line.

15 Mr. SHULMAN: I wouldn't even characterize it as a
16 line. There are photographs. They are photographs that by
17 reference he believed were proper and legal because they're
18 sold and sold through the mainstream of commerce. And his
19 photographs that he took were in the same vein.

20 THE COURT: So walk with me down this road.

21 Mr. SHULMAN: Yes.

22 THE COURT: That is, there are photographs that
23 are sold why would that excuse Mr. Croft's behavior if
24 those published photographs were considered to be child
25 pornography but for whatever reason were not prosecuted.

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1 Mr. SHULMAN: There are two subsets to that
2 argument. The first subset is that the photographs the
3 Government is referencing weren't sold. In fact, there's
4 been admission that none of the photographs that Mr. Croft
5 was alleged to have sold constituted child pornography.
6 Most of these are images that appear either on a camera
7 card or they've been transferred to a computer. The part we
8 discussed the last time was the operation of Mr. Croft in
9 taking a series of digital photographs where hundreds of
10 pictures are taken on a camera card. Some of those are
11 downloaded. Some of those are refined for later sale. The
12 ones that were sold do not constitute child pornography.

13 The second part of the argument is that when it
14 comes to someone's intent on what --

15 THE COURT: But the cross reference doesn't appear
16 to require a sale.

17 Mr. SHULMAN: No, it doesn't appear to be part of
18 a sale. But, however, the Court is able to make findings
19 about -- again, this is for the purpose of producing. If
20 the Court finds that there's an open shutter and we can
21 establish that by the time frames on the photographs in
22 reference to other photographs, that a series of photos
23 were taken, and what the Government has extracted some
24 photographs from a series where they were definitely shot
25 over the course of a minute where there are ten photographs

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1 one photograph may been extracted by the Government. Where
2 there's an indication that this is child pornography. But,
3 again, those images weren't transferred to a computer. They
4 weren't sold. They weren't transferred to anybody else.
5 They simply either weren't deleted from the camera card, or
6 they were deleted but they were picked up in the carving
7 process on the forensic analysis of the computer card. But
8 it comes down to the intent of Mr. Croft when applying the
9 reference.

10 THE COURT: Well, it says,

11 "If the offense involved causing a minor to
12 engage in sexually explicit conduct.."

13 So the trigger as I see it for the cross
14 reference is the causing of the minor to engage in sexually
15 explicit conduct for the purpose of producing a visual
16 depiction.

17 Mr. SHULMAN: And our --

18 THE COURT: As long as he caused the minor to
19 engage in this conduct he triggers the cross reference. I'm
20 not sure that embedded within that was an intent.

21 Mr. SHULMAN: Our argument would be that the next
22 part of -- the last part of what the Court just read is the
23 triggering factor, too, for the purpose of producing a
24 visual depiction of such conduct meaning that was the
25 purpose. It was caused before that particular purpose.

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1 THE COURT: He produced it. He may not have wanted
2 those images specifically to be the images which were
3 ultimately the ones that he was going to capture and
4 market. But he certainly by virtue of the charge he
5 produced it, and he put these girls in these positions.

6 Mr. SHULMAN: Part of the argument, too, is that's
7 no different than if you were taking shots at a beach where
8 somebody is wearing a bathing suit and the bathing suit is
9 loose and you keep the shutter down and you produce and
10 somebody turns in a particular way where there's a shot
11 that nobody is going to use, but you're done. I don't know
12 if that constitutes a violation of this statute because,
13 again, our argument is that causing --

14 THE COURT: So let me ask this question, as I
15 recall from the plea hearings and the sentencing hearings
16 of the mothers of these young children they were paid. They
17 were paid by Mr. Croft.

18 Mr. SHULMAN: Yes.

19 THE COURT: What was the purpose of him paying
20 them? Usually when somebody comes to have their photographs
21 taken they pay the photographer, not vice versa.

22 Mr. SHULMAN: Well, it was paid through Mr. Croft.
23 But the mechanism was photographs were sold, proceeds were
24 received from the sale of the photographs. The proceeds
25 were divided between Mr. Croft, the photographer, and the

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1 mom. And that's not an un-standard arrangement for people
2 whose photographs are being marketed.

3 Also the --

4 THE COURT: The phrase too cute by half comes to
5 mind.

6 Mr. SHULMAN: But that is the range of them, too.
7 And the Government's in possession of the contracts which
8 talk about that allegation of income. It's not un-standard
9 that somebody receive what amounts to a right --

10 THE COURT: Let me hear from the Government. Mr.
11 Roth?

12 MR. ROTH: Your Honor --

13 THE COURT: Understanding that both Mr. Roth and
14 the Court although certainly the Court more than Mr. Roth
15 are at a disadvantage here.

16 MR. ROTH: Your Honor, I think the Court was
17 exactly correct when the Court indicated -- talked about
18 the defendant going to a line. What this defendant did was
19 he was creating very sexualized child erotica to sell to
20 people that were interested in these materials on line. He
21 used the mothers and the kids to create this material. The
22 Court is absolutely right, he went right up to the line.
23 And during the course of going right up to the line he
24 crossed it. He crossed it multiple times. When he crossed
25 the line he created child pornography. And I can prove he

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1 created child pornography by the exhibits that are in our
2 exhibit binder for this exact purpose.

3 THE COURT: So I'm going to have to look at these
4 photographs to make a determination apparently.

5 MR. ROTH: Our position is --

6 THE COURT: But is the question Mr. Shulman's
7 argument albeit not subject to a written objection as
8 required, Mr. Shulman's argument is that the depictions
9 were caused for the purpose of producing a visual
10 depiction. Mr. Shulman's argument is these were sort of,
11 you know, collateral images, not the precise image that he
12 wanted to use. And because of the shutter being opened it
13 captured provocative poses, but also captured poses that
14 went beyond provocative into pornography. That seems to be
15 his argument.

16 MR. ROTH: Yes, your Honor, that does seem to be
17 his argument.

18 My response to that is when you put a child in a
19 see-through shirt with no underwear on and start taking her
20 picture the inevitable consequence of that is that you're
21 going to capture her vagina and create child porn.

22 THE COURT: So it is the standard that he either
23 knew or should have known that invariably in taking these
24 photos he was going to be producing or causing to be
25 produced a visual depiction of child pornography?

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1 MR. ROTH: The Government's position is that the
2 evidence speaks for itself. And whether or not he had --
3 whether or not the standard is a specific intent or a
4 general intent the evidence shows that he specifically
5 intended to create these images. He did so by how he set
6 the scene.

7 There's a case that I can't remember off the top
8 of my head that references a situation when the Court is to
9 look at something to determine whether or not it's child
10 pornography. And the case cite doesn't come to mind, but
11 what the case says is that the Court can look at pictures
12 that are taken beforehand and the Court can look at
13 pictures that are taken afterwards to determine whether or
14 not the person that created the image intended to create
15 child porn.

16 The analogy I would give the Court is this: If
17 you take ten pictures of a child in a bath and one of those
18 ten pictures captures the genitalia of the child, I would
19 think that would show that the person did not necessarily
20 want to create child porn considering nine out of the ten
21 pictures are not of the genitalia. But when you take bath
22 pictures and you take -- and half of them are of the
23 genitalia and there's very little water in the bath, and
24 everything is set so that when you do take a picture and
25 you capture that genitalia that tells an entirely different

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1 story. And what he did is he put these kids in outfits that
2 the only thing that could happen if you're going to hold
3 the shutter open and have the kids pose is that you're
4 going to capture their genital area. That is the only
5 consequence. Anybody who looks at those pictures -- I don't
6 want to say anybody, but the Government's position is if
7 you look at those pictures, and the outfits, and the poses,
8 and what's going on. The obvious consequence of that
9 behavior is that these images would be created which means
10 he was bringing it right up to the line and letting them
11 cross the line. And he kept those that crossed the line,
12 and he sold the ones that maybe didn't cross the line
13 because Mr. Shulman right, we don't have evidence that he
14 sold the ones we consider child pornography. But what he
15 did was he set in motion and he let it go forward and he
16 captured these pictures. And if the Court looks at the
17 exhibits you'll see what they wore, how they were posed,
18 and that's just in Exhibit Number 1. I have Exhibit Number
19 2 which are the images that we characterize as child
20 erotica which are images that are right up to the line.
21 Some of the images in Exhibit 2 are parts of what's in
22 Exhibit 1. But you can see the progression, how you dress
23 them in these outfits, have them pose, have them move, you
24 sexualize them, and then invariably you're going to capture
25 the images that we call child pornography.

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1 THE COURT: Is the case you're referring to the
2 Seventh Circuit case, U.S. versus Stone?

3 MR. ROTH: It is not. It's a Sixth Circuit case.

4 THE COURT: The Martin case? U.S. versus Martin?

5 MR. ROTH: It wouldn't be fair to guess at
6 the name. I can dig it up because I know it became an issue
7 in a case that I tried before Judge Lawson and he used that
8 particular case to determine -- that's the case where the
9 Sixth Circuit adopted the Dost factors where if the Court
10 looks at the Sixth Circuit Pattern Jury Instructions
11 there's a list of factors the court is to look at, or that
12 a jury is instructed on when trying to make a determination
13 if something is child pornography or not.

14 But our position is if the Court looks at the
15 images that the Government is alleging are child porn, I
16 don't have all of them here, I only brought a sample of
17 them, but even in the ones that the Government brought the
18 Court can make a finding that these images, number one, are
19 child pornography, and that anybody who's going to
20 photograph a child in these outfits, in these positions
21 doing these things would have to know. It would be
22 counterintuitive to think that you weren't going to capture
23 the genitalia during the course of photographing these
24 children in these outfits.

25 THE COURT: All right. Let me see them.

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1 MR. ROTH: May I approach, your Honor?

2 If I may for the record, Exhibit 1 are the ones
3 -- is a subset of what the Government believes are child
4 pornography. Exhibit 2 are what the Government believes to
5 be child erotica. And Exhibit 3 are the images the
6 Government believes the defendant downloaded from the
7 internet that constitute child pornography.

8 I have had a chance to show it to defense counsel
9 before we began the hearing.

10 THE COURT: You have or have not?

11 MR. ROTH: I have.

12 Not only have I shown him those exhibits, but
13 prior to the defendant's plea on at least two occasions he
14 had an opportunity to come to our office and review the
15 images. In addition to the evidence reviewed he conducted
16 with Inspector Christopher half of the photos.

17 THE COURT: So there are four sets of images as I
18 understand it. I'll just use the names which are not the
19 real names I assume that are referenced in the Presentence
20 Report at paragraph 20.

21 MR. ROTH: Yes, your Honor.

22 THE COURT: Are all four sets here?

23 MR. ROTH: I only printed up 24 images as an
24 example to the Court with respect to what we believe are
25 child porn. But I believe Exhibit 1 adequately captures the

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1 arguments made by the Government.

2 THE COURT: Mr. Roth, tell me again what Exhibit 2
3 is.

4 MR. ROTH: Exhibit 2 is what the Government would
5 classify as child erotica. Images that don't meet the
6 statutory definition of child pornography. And the reason
7 those are included in the exhibit book is to give the Court
8 context to which the items in Exhibit 1 were taken. So you
9 see the outfits that the kids were placed into, and the
10 kinds of images that the defendant was attempting to create
11 that were going to be sold on line.

12 When you look at a collection of the images that
13 were there, again, our argument is, it was inevitable and
14 when he put the kids in those images and photographed them,
15 he had to know that child pornography was going to
16 ultimately be the result.

17 As Mr. Shulman said when you hold the camera on
18 and you're taking picture after picture after picture and
19 the kids are wearing that -- those outfits, that are put in
20 those poses, it's inevitable what will come out of it.

21 THE COURT: Even some of the ones in Exhibit 2
22 look to me like they might fall into the definition.

23 MR. ROTH: And I would agree with that. And when
24 we selected the ones for prosecution we focused on it in a
25 very conservative approach to try to take the ones that

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1 are, in our opinion, that were patently obvious.

2 But I would represent to the Court that Exhibit
3 1, every one of those individuals in there are minors. And
4 if the Court takes notes there are pictures of a child
5 standing in front of a mirror wearing fishnet-type outfits
6 where her vaginal region is clearly displayed.

7 This is not even a situation where a child is
8 moving around or posing. A child is just standing there
9 posing herself in front of a mirror. When you take that
10 picture there is no other outcome that you can create other
11 than capturing --

12 THE COURT: That would encompass several photos
13 under Exhibit 2.

14 MR. ROTH: And we have to focus also on what is
15 the definition of child pornography and that is the
16 lascivious exhibition of the genital and pubic area of a
17 child. And the case law says that even if a child is
18 wearing underwear you can still create child pornography if
19 the focus of that image is the vaginal region and it's
20 meant to be lascivious which is to arouse the sexual
21 interest of the person who created them or the person who
22 is to view them.

23 And when you look -- again, I focus on the
24 outfits because I think they tell the majority of the
25 story, you're only going to put a child in an outfit that

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1 makes that child look like a prostitute or a hooker if you
2 want to create images that are highly sexualized and highly
3 lascivious.

4 THE COURT: I'd have to say that I think many of
5 the images in Exhibit 2 are either right at the line or
6 over the line. Several of them to me are -- I believe are
7 over the line in that definition.

8 MR. ROTH: And I would agree, but, again, we took
9 a conservative approach and focused on the ones that in our
10 mind were not near the line but way beyond the line. That's
11 why I said this defendant went up to the line because
12 that's what he was making off of. It sold when he could
13 bring this as close to the line as possible. But he knew it
14 also going to cross the line. And he continued to take the
15 pictures.

16 THE COURT: I would note that there are some
17 pictures that are both in Exhibit 1 and Exhibit 2.

18 MR. ROTH: There are, your Honor.

19 That was not intentional.

20 THE COURT: There needs to be a record on this so
21 that the Court of Appeals can review it. Unfortunately the
22 particular photographs have not identified themselves.

23 And Exhibit 3 is what?

24 MR. ROTH: Exhibit 3 are samples of images the
25 Government believes are child pornography that were

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1 downloaded from the internet that the defendant did not
2 create.

3 THE COURT: So these are ones he didn't create
4 and, therefore, would not have triggered a cross reference.

5 MR. ROTH: That's correct, your Honor.

6 And when defense counsel references that during
7 the plea he made admissions that he downloaded images that
8 constituted child pornography from the internet Exhibit 3
9 is what defense refers to.

10 THE COURT: Well, clearly the photographs just a
11 very glancing review of Exhibit 3, are more extreme and are
12 without any question pornography taken for the purpose of
13 lascivious pleasure.

14 MR. ROTH: If the Court wishes that the exhibit
15 book the Government created become part of the record we
16 can file an amended exhibit book with the particular file
17 names attached to the pictures so that it's a complete
18 exhibit for the purposes of following the case through the
19 record.

20 The Government produced --

21 THE COURT: Well, I think the Court of Appeals
22 would be at a disadvantage without the Court at least
23 denoting those images in Exhibit 1 and Exhibit 2 which
24 clearly are to the Court pornographic in the crossover of
25 lines.

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1 MR. ROTH: Can the Government make a motion to
2 admit Exhibits 1 and 2 --

3 THE COURT: I'll tell you what I'm going to do.
4 This has gone on too long. I am going to make this the
5 official record.

6 Let me ask this: There's no -- once the record is
7 created as to whether a photograph is or is not child
8 pornography the cross reference is triggered without any
9 numerical value as to the number of photographs; correct?

10 MR. ROTH: Correct. One photograph is sufficient
11 to trigger the --

12 THE COURT: Do you agree with that, Mr. Shulman?

13 Mr. SHULMAN: If the Court -- depending on how the
14 Court defines it, but, yes.

15 THE COURT: Do you agree with Mr. Roth's
16 definition of child pornography?

17 Mr. SHULMAN: It's the statutory definition, your
18 Honor. I don't agree --

19 THE COURT: Right.

20 Mr. SHULMAN: I agree that the statute controls.

21 THE COURT: Lascivious display of a minor's
22 genitalia.

23 Mr. SHULMAN: Yes.

24 THE COURT: Okay. With counsel's agreement I am
25 going to simply take Exhibit 1, go through it. Mark the

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1 pages, pages 1, 2, 3, 4, et cetera consecutively. And the
2 photographs as A, B, C starting in the upper left-hand
3 corner and proceeding clockwise. There are, I think, on
4 each page four photographs. So I will mark the pages one
5 through however many pages there are and the photographs as
6 A, B, C, D clockwise.

7 Page one, the upper left-hand corner, I think "A"
8 is questionable, maybe on the other side of the line. I
9 don't specifically find that there's been a specific
10 depiction of genitalia that is uncovered.

11 "B" on page one, there's certainly genitalia
12 revealed. It looks to me as though the child is removing
13 the cover to reveal the genitalia. That is child
14 pornography.

15 "C," again the child's genitalia vaginal area is
16 clearly revealed.

17 "D, the same.

18 So on page one, I find B, C and D, all of the
19 same child.

20 Page two, "A" left-hand corner, the vaginal area
21 is revealed and largely uncovered.

22 "B," is closer because of the position the leg.
23 The leg and the boot the child is wearing appears to be
24 covering or blocking the view of the vaginal area.

25 "C," again, the vaginal area is clear.

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1 The same with "D".

2 So in page two, A, C, and D.

3 Page three, again all of the same child.

4 "A," that -- all of these are lascivious
5 displays. The child -- I should add as a -- preface this by
6 saying in each of these photographs the child is dressed up
7 in a lascivious outfit and the posture of the child and
8 actions of the child look to be clearly lascivious in
9 nature.

10 "B," I would also indicate as child pornography.

11 "C" and "D" are both within the definition.

12 So A, B, C and D on page three.

13 Page four, "A," the vaginal area is clearly
14 exposed. The child is lifting her leg and revealing clearly
15 her vaginal area.

16 "B," not so clearly. This looks more on the
17 nature of erotica.

18 "C," the child is wearing -- in both B and C, the
19 child is wearing a fishnet see through. I'm not sure that
20 the vaginal is clearly exposed.

21 For purposes of the record I'll say that is not
22 child pornography. It is certainly right up against the
23 line.

24 "D," the child has her legs up and her arms
25 across the legs in such a way that the vaginal area is

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1 clearly exposed.

2 So on page four, A and D are clearly child
3 pornography.

4 Page five, "A," upper left-hand corner, the
5 vaginal area is largely covered. Again, right up against
6 the line. I would say it doesn't say quite meet the
7 statutory definition.

8 "B," again, right up against the line, but the vaginal
9 area is hidden by the pose that the child is in.

10 "C," again, the vaginal area here is not clearly
11 exposed.

12 "D," the vaginal area is clearly exposed though
13 the child has her hands down. The vaginal area is clearly
14 exposed.

15 So on page five only "D" would fall into the
16 definition of child pornography.

17 Finally, page six, "A" is a picture of a child
18 although an older child looks to be. Is this 14 year old
19 Kimmy?

20 MR. ROTH: Fourteen at the time it was taken, your
21 Honor, yes.

22 THE COURT: "A" depicts the child wearing fishnet
23 stockings. Clearly see through. The vaginal area is clearly
24 exposed.

25 Looking into the mirror and the mirror image in

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1 "A" and "B" the vaginal area is clearly exposed. These do
2 not appear to be at least accidental or incidental.

3 "C," lower left-hand corner, images are clear
4 enough that the vaginal area is exposed.

5 "D," the child has her legs together. Largely --
6 again, right up against the line, but I can't say that it
7 has crossed the line because she has her legs completely
8 closed and together.

9 Looking at Exhibit 2 there are any number of
10 photos here that seem to have crossed the line. Some of
11 them are -- I'll just go through them quickly. This may be
12 a little more difficult.

13 On page one, I do not see any that cross the
14 line.

15 On page two, seems to include a couple photos on
16 Exhibit 1 that are either exactly the same photo or very
17 similar taken at the same time, specifically page six.
18 There are at least two photos here that cross the line. One
19 is on -- in Exhibit 1.

20 This is on page two of Exhibit 2, we will label
21 them "A," "B," and "C," again clockwise, "D," "E," "F,"
22 "G," "H" and "I".

23 Of these nine photographs two clearly cross the
24 line. "F" and "G" looks to be the same young girl that was
25 in Exhibit 1, page six.

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1 Page three, there are a couple that are right up
2 to the line. The children are wearing body paint so it's
3 difficult to tell. But I can't say that any of these photos
4 cross the line.

5 Page four, all lascivious poses no doubt, but,
6 again, taking a very conservative view I assume the
7 depiction of a young girl's breasts are not within the
8 definition?

9 MR. ROTH: Correct, your Honor.

10 THE COURT: I can't say any of the ones on page 4
11 cross the line.

12 Page five, Exhibit 2, again, they're all in
13 lascivious poses, but not clearly cross the line.

14 Page six -- on page six most of the photographs
15 depict young girls covered by body paint. The vaginal area
16 is not clearly visible although it's covered by paint. I
17 will say that none of those cross the line.

18 Page seven, none cross the line.

19 Page eight, again, these are all lascivious
20 photos most of young girls in a shower but -- or a bath,
21 but not clearly depicting the vaginal area.

22 Page nine, none of these photos cross the line.

23 Page ten, none of the photos cross the line.

24 Page 11 includes some of the same photos from
25 Exhibit 1 that I have felt do cross the line specifically

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1 on page 11, again, there are nine. I'll mark them A, B, C,
2 D, E, F, G, H and I. They are either identical photos or
3 taken at the same time and bearing similar to and in these
4 page 11, "B" crosses the line. "C" is very close. "D" does
5 not. "E" does not. "F" clearly does cross the line. The
6 child's vaginal area is clearly exposed. Same with "G". "H"
7 close but perhaps not. "I" although this is a photo of the
8 child with her legs up and her arms across the legs, but
9 the vaginal area is exposed.

10 Turning to page 12, again, these look to be the
11 same young girl that was in the older -- the 14 year old
12 that we referenced was in Exhibit 1 on page six. These are
13 even more explicit, some of them. There are four photos and
14 clearly "A" crosses the line, "B" crosses the line, "C"
15 crosses the line. "D" is of another young girl although
16 close but does not cross the line.

17 Page 13, this picture is -- I believe it's the
18 same one that I already held crosses the line. On page 13
19 this would be "A" and is pornographic, but the copy that
20 I've got is not as clear as the one in Exhibit 1.

21 "B" crosses the line clearly. "C" clearly crosses
22 the line and "D" clearly crosses the line.

23 Page 14, "A" crosses the line. Clearly is
24 pornographic. "B" clearly is pornographic, pubic areas
25 completely displayed. "C" crosses the line. "D" crosses the

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1 line. All of these are over the line.

2 And, finally, on page 15, again, very close. "A"
3 crosses the line. There are only two photos. "B" is
4 depicting three children, only one of which the one in the
5 center shows the vaginal area and crosses the line.

6 All right. That's the record.

7 So, I found that many of these photos, in fact,
8 do fall within the definition of child pornography.

9 The question then is, two parts: Did the
10 defendant cause these? And under any common sense
11 definition of causing particularly the definitions given in
12 the application notes of -- first that the definition
13 should be construed broadly, first is applying the cross
14 reference, but even beyond that the helpful explanation is
15 that

16 "where the offense involved employing, using,
17 persuading, inducing, enticing, coercing, transporting,
18 permitting a minor to engage in sexually explicit conduct."

19 As I indicated all of the photos here are at the
20 very least lascivious, and beyond lascivious the ones that
21 I have demarked as child pornography are, in fact, sexually
22 explicit at least. And there's no question that Mr. Croft's
23 conduct here involved using, or persuading, or producing,
24 or enticing these children to engage in this sexually
25 explicit conduct.

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1 The question then becomes were these for the
2 purpose of producing a visual depiction of such conduct I
3 would have to be both literally and figuratively blind to
4 say that they did not. There is no way given the poses,
5 given the dress, given the conduct of these children that
6 were obviously enticed, and in the context of the full
7 relationship at issue here in which the mothers were paid
8 to bring these children and they were dressed up in this
9 lascivious garb I would have to be both, as I said,
10 literally and figuratively blind to say that there was not
11 a purpose of producing a visual depiction.

12 So whether to say there is a general intent
13 statute or a specific intent statute I find that the
14 defendant's conduct falls within U.S. Sentencing Guideline
15 2G2.2(c)(1). And, therefore, the cross reference is
16 triggered.

17 All right, that clears away those issues.

18 I believe that resolves the principal if not the
19 only objection to the Presentence Report in the Court's
20 interpretation here and, therefore, the 120 month --
21 because the cross reference applies, the 120 month
22 statutory term applies.

23 All right. Anything else on the Presentence
24 Report?

25 MR. ROTH: Your Honor, I would ask the Court to

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1 voir dire the defendant as to whether or not he had an
2 opportunity to review the report with his attorney, and if
3 he had any deletions, modifications --

4 THE COURT: I think we did that the last time, but
5 perhaps not.

6 MR. ROTH: I --

7 THE COURT: I think we did. Just on the
8 Presentence Report?

9 MR. ROTH: I may be wrong. I would defer to
10 anybody else that was there.

11 THE COURT: Well, out of an abundance of caution,
12 Mr. Shulman, have you reviewed the Presentence
13 Investigation Report with Mr. Croft?

14 Mr. SHULMAN: Yes, I have. We did it some time
15 ago.

16 THE COURT: Did Mr. Croft have an opportunity to
17 see the report?

18 Mr. SHULMAN: Yes.

19 THE COURT: And to read it?

20 Mr. SHULMAN: Yes.

21 THE COURT: Mr. Croft, would you please confirm
22 that?

23 THE DEFENDANT: I have.

24 MR. ROTH: Your Honor, I don't want to throw a
25 wrench in anything, but I don't believe we went on the

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1 record at all the last time we were here. I believe the
2 Court brought us into chambers and inquired as to the
3 status of Mr. Shulman's objections and filings. And the
4 Court adjourned it without going on the record. That's my
5 recollection.

6 THE COURT: My recollection is we were on the
7 record at least preliminarily as counsel spelled out the
8 concerns. I know we came out on the record, and I ordered
9 you to make the photographs available.

10 MR. ROTH: Right. I guess I should be more clear.
11 In a sentencing context where I don't believe the Court
12 initiated a sentencing hearing. I believe we addressed what
13 took place in chambers --

14 THE COURT: Oh, okay.

15 MR. ROTH: And only talked about the scheduling as
16 well as making it available, but I don't believe the Court
17 in its typical fashion initiated the beginning of the
18 sentencing hearing, and then went forward from that point.

19 THE COURT: All right. Mr. Shulman has confirmed
20 that he has reviewed the Presentence Report and reviewed it
21 with Mr. Croft. Are there any other matters concerning the
22 Presentence Investigation Report that the defense wants to
23 bring to the Court's attention at this time?

24 Mr. SHULMAN: No.

25 THE COURT: Let me hear from the Government.

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1 Anything else, Mr. Roth?

2 MR. ROTH: No, your Honor.

3 THE COURT: Yes, Ms. Collins?

4 MS. COLLINS: As a matter of clarification, I'd
5 just like to mention that the statutory maximum penalty is
6 ten years. The guideline range for --

7 THE COURT: I should have made that clear.

8 The guideline range with the statutory maximum is
9 ten years. I said -- did I say statutory minimum?

10 MS. COLLINS: Yes.

11 THE COURT: The maximum is ten years. The
12 guideline range with the application of the cross reference
13 is 210 to 262 months. Therefore, the maximum that is
14 triggered here is ten years or 120 months.

15 All right. Allocution starting with Mr. Shulman
16 on behalf of your client.

17 Mr. SHULMAN: Thank you, your Honor.

18 THE COURT: You can do it from there.

19 Mr. SHULMAN: Your Honor, one of the things that's
20 apparent in this case, we keep on talking about a line, or
21 going up to the line in the photographs. Given that the
22 guidelines are advisory the question becomes even if the
23 cross reference applies and, again, we disagree with the
24 Court on that respectfully, but the question becomes should
25 that drive the sentencing here. When we talk about what the

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1 line is, the line comes from the statute itself. The line
2 is "lascivious" a lascivious display of the genitals. It's
3 not simply a display because nude photographs of someone
4 even who is -- can still be legal without crossing the
5 line. So something either violates a statute or doesn't or
6 if the statute can't be interpreted with certainly there's
7 some ambiguity.

8 THE COURT: Is this legal argument or is this
9 allocation?

10 Mr. SHULMAN: It's both because what I'm asking
11 the Court to do is take all these into account in
12 fashioning a sentence because it goes to where Mr. Croft's
13 mind is. It's a preface to that.

14 And what I'm getting at, your Honor, is that the
15 Court obviously disagrees with the Government in some
16 respects in defining what child pornography is given the
17 Court's findings on images.

18 THE COURT: Well, there's a paraphrase of Justice
19 Potter's words, a well worn adage that obscenity, in this
20 case, pornography, is in the eyes of the beholder.

21 Although I must tell you, Mr. Shulman, in many of
22 these depictions I don't think anybody would look at them
23 and not believe that they were intentionally lascivious and
24 pornography.

25 Mr. SHULMAN: And I would submit to you, too, that

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1 the images that the Court went through that were produced
2 by Mr. Croft, and that's Exhibit 1 which the Court was
3 looking at, are images that the Government has admitted
4 were not sold, they were not distributed. And most of those
5 images are images that came from the computer card. Some of
6 them were "carved" meaning that they had been deleted. So
7 these aren't images that were used for anything further.

8 And if it was Mr. Croft's intent to produce child
9 pornography for sale or for commercial factor with all due
10 respect if the Court determines that something is child
11 pornography that would probably give value to the item in
12 terms of a market. That isn't the case. And there is no
13 evidence that what Mr. Croft was engaged in or selling was
14 child pornography --

15 THE COURT: That's not required for the trigger of
16 the guidelines or the statute.

17 Mr. SHULMAN: I understand, your Honor. But in
18 terms of where somebody falls on the relative spectrum of
19 violating the statute even if the cross reference applies I
20 think the Court can take that into account because in
21 somebody who is affirmatively producing and selling child
22 pornography is different than somebody who may be producing
23 or incidentally producing but not passing along or even in
24 cases deleting the images after they're placed on the card.
25 I would submit that in this case, again, the shutter is

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1 held down and there are a number of images that are
2 produced.

3 But in any event what the Court has to look at
4 when the Court is fashioning a sentence is -- in terms of
5 an appropriate sentence who you have before you. And if you
6 have somebody who is making an attempt to conform conduct
7 even though that conduct may cross the line in the Court's
8 opinion in some cases and not cross the line in other --

9 THE COURT: Let me ask you a question: Mr. Croft
10 was originally charged with production.

11 Mr. SHULMAN: Correct.

12 THE COURT: Correct?

13 Mr. SHULMAN: Correct.

14 THE COURT: That would have triggered potentially
15 substantially greater sentences including mandatory
16 minimums; correct?

17 Mr. SHULMAN: Absolutely.

18 THE COURT: So your argument that he didn't intend
19 to produce for sale child pornography even if I were to
20 accept it, which I have some question about it, but even if
21 I were to accept it, there's already been an accommodation
22 by having him plead only to the possession count which is
23 perhaps the most given everything else the most lenient of
24 counts, yes?

25 Mr. SHULMAN: Yes.

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1 THE COURT: So hasn't Mr. Croft by pleading guilty
2 albeit without the benefit of a plea agreement and without
3 the concurrent obligations of a plea agreement hasn't he
4 already realized the benefits of the argument that you're
5 trying to make which is production?

6 Mr. SHULMAN: No, your Honor.

7 THE COURT: How?

8 Mr. SHULMAN: I believe this is the reason why:
9 The statutory maximum for what he's pled to is not to be
10 presumed to be a reasonable sentence here as well, and the
11 guidelines are simply advisory. So, again, if the Court is
12 going through the factors that it wants to go through one
13 of the things you're looking at is the conduct, is this
14 somebody who is egregious in his actions? And what I would
15 submit to you is, again, if somebody's trying to conform
16 their conduct somewhat to the law which in some ways the
17 Court says he did and came up to the line or it crossed one
18 of the things that the Court can look to in deciding
19 whether somebody has the intent to flout is what kind of
20 standards he's using to help make decisions?

21 THE COURT: I appreciate your argument. I
22 understand the phrase if you play with fire you're
23 inevitably going to get burned comes to mind.

24 Mr. Croft was clearly playing with fire here. He
25 dressed these girls in lascivious customs. He had them pose

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1 in lascivious and provocative ways. He paid the parent, he
2 paid the mothers. He was playing with fire. And he knew,
3 had to have known, that there was a reasonably good chance
4 that he was going to get burned by crossing the line.

5 Mr. SHULMAN: This is where I would like the Court
6 to consider it to: This is really the reason because this
7 gets to why somebody's belief of what the law is, making a
8 reasonable -- even if it differs from the Court or the
9 Government's approximation or definition of the law. The
10 reason why it's important is if there's any ambiguity, I
11 submit that lascivious has some ambiguity under the rule of
12 lenity --

13 THE COURT: Agreed, but hasn't he already achieved
14 the rule of lenity by pleading guilty to the much lesser
15 offense rather than production which in the Court's view
16 now with the findings the Court has made he has violated
17 that statute as well. Has he not achieved lenity --

18 Mr. SHULMAN: No, your Honor, and here's the
19 reason why, and this is what I would like the Court to
20 consider. Has he -- has he received a reduction from what
21 he was facing? Yes. But here's what I would like the Court
22 to consider: At the time that he was arrested there was a
23 book that was in his possession. A book which he has
24 indicated today was something that he modeled photographs
25 of, a book which is available at the local Barnes & Noble.

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1 You can go to Grosse Pointe and you buy it. You can go Ann
2 Arbor --

3 THE COURT: Well, because it's on the market and
4 because somebody else didn't get prosecuted for it doesn't
5 mean that Mr. Croft's conduct didn't -- is not child
6 pornography.

7 Mr. SHULMAN: But it's --

8 THE COURT: Those photographers are not before me.

9 Mr. SHULMAN: I understand. I'm not making the
10 argument that just because somebody else does something it
11 makes something legal. However, when we're talking about
12 the egregiousness of someone's actions what I'm arguing to
13 the Court is the fact that there's an external reference
14 point that's available and publicly available forms widely
15 anywhere, Amazon and bookstores, that's something that
16 should be taken into account by the Court in determining
17 what some of these actions are. If they have a belief
18 that's formed based on these things that out there, even if
19 the Court concludes that it's over the line it's still far
20 different than someone who's not trying to conform their
21 conduct with the law at all. It becomes a question of am I
22 on the right side of the line or not. And there may be a
23 belief which is wrong although recently held which doesn't
24 excuse conduct under the law, but really goes towards where
25 somebody's head is at. I have a copy of this book here,

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1 too. I hope I wouldn't be prosecuted for bringing in a book
2 that is available anywhere. But if the Court --

3 THE COURT: I don't think you've produced the
4 book. You vested I suppose, but you didn't cause the -- you
5 didn't cause it. And it's being used here under a court
6 litigation context.

7 Mr. SHULMAN: May I mark it and tender it to the
8 Court? It's the same book that was taken into evidence by
9 the Government.

10 May I approach?

11 THE COURT: You may.

12 Anything else?

13 Mr. SHULMAN: I would ask the Court to take a look
14 at that because, again, I mean if there are -- they're
15 pictures of --

16 THE COURT: I take it you want me to look at the
17 -- I take it you want me to look at the ones that are
18 tagged?

19 Mr. SHULMAN: I think those are particularly
20 applicable, although, I think the entire book if the Court
21 leafs through it is relevant because this becomes the type
22 of pictures. If the Court goes through the same type of
23 analysis, the Court may very well conclude that some of
24 these images either go to the line, cross the line, maybe
25 neither. But that's where Mr. Croft is coming from.

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1 Mr. Croft also took pains to protect his
2 copyright. In fact, the Government's aware of how he
3 watermarked different pictures, trying to protect his
4 intellectual property.

5 THE COURT: I'm looking at several of these
6 pictures using the standard that I used in going through. I
7 would find that some of them do cross the line. A few of
8 them, but not all of them that you have tabbed. But I'm not
9 sure what the relevance is.

10 Mr. SHULMAN: The relevance is, again, it's an
11 external reference book. It's an influence, too. And if
12 somebody says is the conduct crossing the line, if they
13 don't have --

14 THE COURT: You know, I'd have to say I'm not sure
15 when these pictures were taken. I wonder if these pictures
16 were taken before the statute. Some of them -- I don't know
17 that, but --

18 Mr. SHULMAN: They're sold after the statute, and
19 they're currently being sold as well.

20 THE COURT: But at the time they were taken and
21 produced and the conduct was caused may well have been
22 before the statute.

23 So, again, I'm not -- it's a clever argument.
24 It's a good lawyer's argument. I'm not sure what the
25 relevance of it is.

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1 Mr. SHULMAN: Well, the relevance is there are
2 other books by authors like Jack Sturgis which were taken
3 after the statute.

4 Mr. SHULMAN: I am not a collector of this kind of
5 artwork. Certainly not expert in it.

6 But all of this to the Court is not really
7 relevant.

8 Mr. SHULMAN: The reason --

9 THE COURT: The Court is focused on Mr. Croft's
10 conduct.

11 Mr. SHULMAN: Right. And I'll keep it focused on
12 that, too.

13 When it comes to Mr. Croft's conduct, if somebody
14 is not -- we see these cases every day the Government, me,
15 the Court, but somebody who is not well versed in this like
16 Mr. Croft uses the external reference that he can. And when
17 it comes to his own conduct in taking photographs the use
18 in external standard even if the Court disagrees in some
19 respects to some of those images, I would submit that he
20 doesn't fall on the same end of the spectrum. He isn't
21 trying to produce the most egregious child pornography that
22 there is and try to market it.

23 THE COURT: I appreciate hearing your argument,
24 but looking at the Presentence Report in 2006, Mr. Croft
25 was arrested and charged in a criminal complaint in

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1 Kalamazoo with child pornography. Images and videos of
2 child pornography.

3 Mr. SHULMAN: And the case was dismissed, your
4 Honor.

5 THE COURT: And it was dismissed based on
6 constitutional infirmity in the search apparently.

7 Mr. SHULMAN: Well, that was a case that would
8 have been gone -- it would have gone to trial had there not
9 been the suppression.

10 THE COURT: I only take this, do you want me to
11 look outside the record for indications of intent? If I
12 look outside the record I see this is not Mr. Croft's first
13 experience with child pornography. If you really do want me
14 to look outside the record and, of course, prior criminal
15 conduct, even dismissed criminal conduct the Court may
16 consider in determining things like the egregious conduct
17 and the argument that you're making really has several
18 sides to it.

19 Mr. SHULMAN: I agree. If the Court were to
20 include his criminal -- again, what you have here is Mr.
21 Croft took thousands of pictures, and the Government has
22 said that up in the thousands, 38 are ones in their belief
23 cross the line. The subset of that is what the Court
24 believes.

25 In any event, what Mr. Croft did is -- in going

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1 on the internet he clearly downloaded images although they
2 weren't kept in an organized file at the same time he was
3 trying to go out and see where other images, came into
4 contact, he downloaded them. That's wrongful conduct.
5 Without the cross reference on that, the guidelines here
6 were 51 months I believe --

7 THE COURT: Fifty-seven to 71.

8 Mr. SHULMAN: Yes. And those guidelines -- the
9 guidelines may be more appropriate, but I would submit to
10 you that more is going on here, too, your Honor. In fact,
11 Mr. Croft does not have -- for the record, he is a father.
12 He's been separated from his daughter now for about two
13 years. He's very, very close to his daughter. And he has
14 gone through a whole lot of thinking about this situation.
15 And even if there was a line I think the correction here
16 and Mr. Croft would tell you the same, has had a profound
17 effect where he never wants to engage in any conduct that
18 might be questionable whether somebody can say he's at the
19 line, above the line, be near the line.

20 He was incarcerated in June of 2012. He's been
21 constantly in custody for the first time.

22 THE COURT: Should his experience in Kalamazoo in
23 2006, have not been an object lesson from when he escaped
24 unscathed because apparently the police made procedural
25 errors in seizing the evidence? Should that not have been

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1 an object lesson for him?

2 Mr. SHULMAN: Your Honor, again, it comes down to
3 lines I suppose, and different jurisdictions may have
4 different lines. But there are people who take photographs.
5 There's been a number of professional photographers
6 including Robert Maplethorpe and others whose works have
7 been exhibited in museums, and have been subject to
8 prosecution, the cases have been dismissed and they've
9 continued with their work. And they use external reference
10 points or other things to try to keep their conduct where
11 they think that the law is.

12 But in this particular case, Mr. Croft has no
13 desire to go anywhere near what anybody may think is the
14 line at all.

15 THE COURT: One could argue that he should have
16 learned that back in 2006 and 2007, and he dodged a bullet
17 there.

18 Mr. SHULMAN: Except the Court hasn't seen the
19 images from those particular --

20 THE COURT: True, true. I only have a description.

21 Mr. SHULMAN: And what the Court has is the charge
22 which is a state charge. But that requires the same type of
23 rifling through files and photographs, too, to determine
24 whether somebody is at the line or not.

25 But in any event, it's had a profound effect on

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1 him and with being incarcerated this entire time, being
2 away from his daughter. He has no interest in engaging in
3 any type of criminal behavior.

4 He's also been a person who, even if the Court
5 disagrees where he is has tried to moderate his conduct
6 even if he was wrong where that line was, and really knows
7 that he has to stay clear of any wrong in the future.

8 THE COURT: Thank you, Mr. Shulman.

9 Mr. Roth, allocution?

10 MR. ROTH: Yes, your Honor. Thank you.

11 Your Honor, first and foremost, the pictures
12 speak for themselves. And defense counsel asks the Court
13 who do you have before you? I would represent to the Court
14 you have a predator sitting before the Court. Somebody who
15 knew exactly what they were doing.

16 Defendant talks about -- defense counsel talks
17 about conformity and moderation of conduct. What you have
18 here is somebody that knew where the line was and exploited
19 that knowledge and created images as close to the line as
20 possible because that's what will sell on line.

21 As the Court knows because the Court has seen a
22 significant amount of child pornography cases, these images
23 are very valuable on line especially to people that are
24 interested in these things. What makes them even more
25 valuable is when you can create new materials which is one

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1 of the reasons why the cases that the Court sees that
2 involve production are so much -- the penalties are so much
3 greater not only because the children are physically
4 assaulted during the course of the production but because
5 it is the production of the images that creates more supply
6 and a demand is for those new images. So we have somebody
7 that educates themselves about what is or what is not child
8 pornography, creates new material that is as close to the
9 line as we can get, and then he turns around and sells it
10 on line. That's how he makes his money. And that's how he
11 pays the moms.

12 We also know that he's not only exploiting these
13 children by putting them in these outfits that are
14 reprehensible for a child as young as four years old to
15 wear, but he takes these moms that are more susceptible I
16 would submit to the Court that others to fall prey to what
17 his scheme is. The Court has taken a plea from four of the
18 moms, and I would submit to the Court that these are not
19 Rhodes scholars. These are individuals who have problems
20 with drugs, problems with employment, and maybe aren't
21 bright in any level whatsoever.

22 THE COURT: And were desperate for money.

23 MR. ROTH: And were desperate for money.

24 These are the individuals that are bringing their
25 children to this man. These are the women he recruits.

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1 These are the women that he pays, and that's why he gets
2 access to these kids to make these images to sell them on
3 line.

4 We also know more about the defendant from the
5 2006 case than I think the Court realizes. I have the
6 images from the 2006 Kalamazoo case here. Inspector
7 Christopher went to Kalamazoo and picked them up. I asked
8 Inspector Christopher to look at the images, what was found
9 in the computer. And if called to the stand he would
10 testify that the images in Exhibit 3 of the Government's
11 binder, the images that we represent were downloaded off
12 the internet that were child pornography that showed kids
13 engaged in oral sex, kids being penetrated by adults, those
14 are the images that Inspector Christopher would testify to
15 are the type of images that were on that computer in
16 Kalamazoo. And defense counsel says that case may have gone
17 to trial and they would have litigated it, but my
18 representations to the Court through Inspector Christopher
19 as this was child pornography just like it was in Exhibit
20 3.

21 THE COURT: Mr. Roth, the only probative value to
22 the sentence of the 2006-2007 Kalamazoo case is one of
23 whether or not the defendant learned his lesson, whether
24 he's capable of learning a lesson. He dodged a bullet
25 because of an imperfection apparently in the search and

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1 seizure conduct of the police. That's probative, but also
2 Mr. Shulman raised issues of intent from extrinsic evidence
3 outside the record of this case saying he was trying to
4 conform his conduct to a book which I'm not sure is very
5 relevant anyway. But the only point that I raise is that
6 this was not Mr. -- when Mr. Shulman was telling me that
7 Mr. Croft had learned his lesson that raised questions in
8 my mind because he had been engaged at least in conduct
9 that triggered his arrest and a charge. He was not
10 acquitted of that conduct. But the charge was simply
11 dismissed for a constitutional imperfection of the search.
12 That's the only thing -- what you tell me is fine, but I
13 think the probative value that I consider important related
14 to sentence is already established.

15 MR. ROTH: And I understand. I believe that
16 there's more to the Kalamazoo case than just what the Court
17 articulated. This indicates that back in 2006, he had
18 sexual attraction to young children, and he was interested
19 in child pornography.

20 It dilutes Mr. Shulman's argument that we have
21 somebody who's trying to act in conformity with the law. It
22 dilutes the argument that this is someone that just wanted
23 to make "art" for lack of a better term.

24 What we have here is someone who we know was
25 looking at graphic images of the sexual exploitation of

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1 children. And then we fast forward to this case and now he
2 is recruiting children and he's taking images that are
3 consistent with exploitative conduct. So my bringing this
4 up was not to try to muddy the waters, but to show that is
5 not a situation where anyone was trying to conform with
6 this law. This is someone who has an attraction to kids,
7 and he used his skill set as a photographer to create a
8 situation where he could get vulnerable mothers to bring
9 kids to him so he could dress them in these provocative and
10 sexual outfits that were wholly inappropriate, create these
11 extreme cases of child erotica, also create child
12 pornography, and then sell it on the internet.

13 THE COURT: And argue that he was not trying to
14 produce child pornography, and come forward with a
15 plausible argument, potentially a plausible argument.

16 MR. ROTH: I think that it was --

17 THE COURT: It's a clever scheme.

18 MR. ROTH: I think it was a scheme without
19 question.

20 And defense counsel is inaccurate when he
21 represents that the images in Exhibit 1 and 2 were carved.
22 All the images in Exhibit 1 and Exhibit 2 were on the
23 camera cards in the computer. There were carved images in
24 Exhibit 3, some of the child porn that was downloaded on
25 line.

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1 But if he had any semblance of wanting to really
2 create art, or if there's any legitimate reason to his
3 behavior that when he went through those pictures and he
4 was taking those pictures he would have either deleted
5 which he didn't do, delete those images of child
6 pornography, or he would have taken some steps to try and
7 limit what he would have captured.

8 I can certainly tell you as a father that when I
9 take pictures of my kids in the bath I make sure that I'm
10 taking appropriate pictures. I make sure that things that
11 shouldn't be captured are not captured. You're a
12 photographer who is trying to do something legitimate and
13 conform your acts, you put your child -- a child in a
14 fishnet top with no bottoms and tell them to sit in a chair
15 that is -- there's nothing about conformity with that. That
16 is for the expressed purpose of creating an image that
17 depicted that child's vagina.

18 And I think the 2006 case and the fact that he
19 had child pornography speaks to that and the images and the
20 conduct in this case speak to that.

21 THE COURT: There is another possibility. The
22 possibility is that taking Mr. Shulman's argument in its
23 best light he was intending to produce child erotica for
24 sale, and there was an incidental benefit to that of also
25 producing pornography for his own possession and

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1 consumption.

2 MR. ROTH: If that's even true.

3 THE COURT: If that's true, he still both violated
4 the statute and triggered the cross reference.

5 MR. ROTH: And he's still a predator, and he's
6 still exploiting the children. And he still had a scheme
7 where the only difference in defense counsel's scenario is
8 that he's recruiting these women to get access to their
9 kids for his own personal sexual gratification if that's
10 really what it is. Either way it's predatory. Either way
11 it's exploited. And either way he's a danger to children in
12 our community. And we know it's not a situation where, you
13 know, he's just grabbing kids off the street. He is
14 scheming to create situations where he has multiple kids,
15 as many as he can produce. He's making money out of it.
16 He's creating this material for himself, whatever it may
17 be. He presents a danger to the community. And the Court
18 hit the nail on the head when the Court asked whether or
19 not he's getting leniency by pleading to what he pled to.
20 And one of our goals when we look at these cases and we
21 charge these cases is to be consistent and fair as best as
22 possible.

23 To Mr. Croft's benefit he -- there's no evidence
24 that he touched any of the kids or molested any of the
25 kids. The Court knows if that was the case he would never

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1 have gotten a deal. And although there is no evidence that
2 he distributed, it's simply that, we don't have evidence to
3 show he distributed. We have evidence that it was on his
4 camera cards.

5 So is he the number one offender that this Court
6 has seen, absolutely not. Is he public enemy number one,
7 no, he's not. And we took that into consideration and we
8 adjusted the charges to fit what we thought would be
9 appropriate in the grand scheme of these kinds of cases.
10 But it does not lessen the predatory conduct. It doesn't
11 lessen what he did to these children. And I think the Court
12 knows that although these kids think they're fancy models
13 right now at some point in the future when these kids learn
14 what really happened to them, they're going to go through
15 the rest of their life knowing that these images are out
16 there, and they are a click away from anybody that wants
17 them. And they don't know if it's their teachers, or their
18 friends or some stranger that they live next to is one day
19 going to come upon these images. And this is something
20 those kids are going to have live with for the rest of
21 their lives.

22 And during -- I have one more thing to say and
23 I'll sit down. During this investigation, Inspector
24 Christopher found a website dedicated to the child
25 referenced as "Alli." And you could click on and you get

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1 more images, and you could subscribe to it, and you get
2 more images and so forth. When you look at the website you
3 see a big picture of Ms. Alli with her hands covering her
4 vaginal region and a ribbon going across her breasts. And
5 behind that image were 12 different images of her in
6 various sexual poses.

7 Now, Mr. Shulman said -- he argued to the Court
8 that he went through certain posturing with respect to his
9 images to prevent copyright infringement. But what really
10 happened is Inspector Christopher was trying to buy the
11 images and he wasn't able to buy them and he needed
12 passwords and code words for all kinds of stuff so he had
13 to have somebody else in the inspections, postal inspection
14 service buy them. And when that person bought it, they were
15 going to buy these images.

16 The point I'm making, your Honor, is that when he
17 sells these images he isn't protecting himself from
18 copyright infringement. What he's doing is he protecting
19 himself from law enforcement. And now these images are out
20 there, and people are making websites about these images.
21 And Mr. Shulman represented that Mr. Croft did not make
22 this image -- this website that Inspector Christopher found
23 which means these kids are going to be on line or somebody
24 is going to find these things. They're out there. They're
25 on the internet. And as the Court knows they will never be

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1 taken off.

2 So we have the predatory conduct and everything
3 we've argued. And we have ultimately the irreparable damage
4 to these children as well. We believe that taking all the
5 factors into consideration that the ten-year sentence in
6 this matter is appropriate.

7 THE COURT: Thank you.

8 Mr. Croft, do you wish to address the Court
9 before sentence is imposed?

10 THE DEFENDANT: Yes. May I stand?

11 THE COURT: You can address the Court from there.

12 Perhaps adjust the microphone, Mr. Shulman, can
13 you assist him?

14 Mr. SHULMAN: Sure.

15 THE COURT: That's fine. Good.

16 THE DEFENDANT: Your Honor, you're sitting there
17 with a book that is widely distributed. I did all I could
18 to try to abide by the law. I thought I had a good
19 understanding of the law, I've read the law. On many
20 occasions in the past I had met with the attorney to make
21 sure I was abiding the law.

22 Back in '06, when I went through that situation,
23 they actually went through my work and said they found no
24 illegal contraband in all the work that I had at that time.
25 Really nothing has changed with regard to the posing, or

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1 anything else that was back then. Just the faces and the
2 outfits.

3 Also at the time and, again, I'm just -- bearing
4 my soul with your Honor, the judge at that time also said
5 there was nothing in the statutes anywhere about wearing
6 provocative clothing.

7 My whole process with producing the images I
8 produced along with what I thought was legal in that book
9 up there, along with others with Sally Mann and Jacques
10 Sturgis, I thought if I kept the models clothed that I
11 wouldn't be in nearly as much hot water I guess you would
12 say in regards to things being viewed I guess you could
13 say.

14 Looking back now, I mean, yes, if I could take
15 back everything I would be a plumber or something along
16 that line. But here we are today and I guess I'm just
17 asking for mercy. I really never thought it would come to
18 this. I thought I was following the law.

19 You know, one thing I want to comment also in
20 regard to what the prosecutor mentioned about the jumping
21 through hoops and trying to avoid police or law
22 enforcement, once I realized that my work was being
23 infringed upon and traded out there I was doing all I could
24 to try to keep that from happening by doing the encryption
25 on the pictures, and making sure that before anybody did

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1 take a look at any of my work that they actually had a real
2 physical address and a home and a place -- you know, if
3 anything ever came about I'd have some recourse because if
4 I found that so and so was trading or copyright --
5 infringed upon my rights, you know, I had a place that I
6 could -- I'd have some recourse. He said a couple different
7 times about jump through hoops and this might have been
8 during the bond hearing. I wasn't trying to create hoops. I
9 probably should have just went straight publication in the
10 books like I've seen at the stores that actually try to do
11 this on line. But even nowadays, your Honor, with google
12 and different companies like that a lot of books are being
13 put on line and, you know, copyright infringement really is
14 an issue when it comes to the internet.

15 In regards to the lewd and lascivious display of
16 genitalia I was under the impression that they had to
17 actually lewd and lasciviously display it. Simply seeing a
18 child nude to me is just a child nude. I mean, I'm a father
19 like apparently the prosecutor and I don't think anything
20 -- these are little kids. That's why when it comes to being
21 lascivious this, or lewd that, I just don't visualize a
22 child being in that mode because they're a child. I would
23 never think of a child --

24 THE COURT: So Mr. Croft, let me --

25 THE DEFENDANT: I'm sorry, your Honor.

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1 THE COURT: No, no. Your comments are fine.

2 I have a different concern. I'm wondering if
3 you're not in denial, and if all of this is not a very
4 complicated construct that you created in your own mind to
5 avoid confronting the reality what seems to be a problem.
6 That's a serious question I've got.

7 The images that I've looked at, are lewd. They
8 are lascivious. The girls are bearing their genitalia in
9 some of the pictures, not all of them. I'm just concerned
10 that you are in denial.

11 THE DEFENDANT: Well, your Honor, I know there are
12 a set of images that you've looked at that were pre-
13 production that were not -- were never used and they were
14 deleted and literally right from the camera being deleted.
15 I never looked at anything like that when I was shooting a
16 picture. I was paying attention to eyes and hand movement.
17 If I kept something I never really thought much about it
18 because I knew when I went through the images it would be
19 either deleted or it would be cropped at that moment, it
20 was never to be produced like that.

21 THE COURT: You walked right up to the line --

22 THE DEFENDANT: I'm not trying --

23 THE COURT: Unfortunately you went over it.

24 THE DEFENDANT: I'm not trying to be in denial.
25 I'm just trying to give you a professional opinion of what

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1 I was trying to accomplish.

2 THE COURT: We're back to where we started which
3 was I said that it looked to me like you were walking a
4 very, very thin line and there were many photos that I saw
5 clearly crossed over the line. I can't peel back your brain
6 and look for why you did it, why you took these pictures.
7 Obviously you were attempting at least to go right up to
8 the line and maybe -- I can't determine that you intended
9 to go directly over the line, but you clearly went over the
10 line and you knew or should have known that you were going
11 over the line.

12 Some of those photos were very explicit. The
13 lascivious clothes. The provocative poses. The display of
14 the genitalia. It's not a comfortable thing to talk about
15 and it's sober and rare in the context of a courtroom, but
16 I can't deny what I saw.

17 My concern is, sir, that you're in denial either
18 as to your motivation or as to your intent, one of the two.
19 That's my concern.

20 I understand you've got all these arguments about
21 why you did it and what you thought, but the pictures
22 themselves, the victims themselves defeat those arguments.
23 That's all I can tell you.

24 THE DEFENDANT: And, again, your Honor --

25 THE COURT: If you were trying to fly close to the

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1 blame without getting burned that was reckless.

2 Is there anything else you would like to tell me?

3 THE DEFENDANT: I don't know what to say, your
4 Honor. I guess I'm sorry. I don't know -- I didn't mean to
5 hurt anybody.

6 THE COURT: Can you imagine or do you understand
7 the prosecutor's point about these young girls as they grow
8 up and they realize that these images are out there on the
9 internet, and can't be taken back? Did that occur to you?

10 I know you have a daughter. She's, what, 17 or 18
11 now? Would you have wanted her out there on the internet in
12 these exact poses that these young girls are in? I wouldn't
13 think so.

14 THE DEFENDANT: One minute, your Honor.

15 THE COURT: All right. Anything further before
16 sentence is imposed?

17 Mr. SHULMAN: No, your Honor.

18 THE COURT: Thank you.

19 Mr. Shulman, before sentence is imposed I will
20 just tell you I've accommodated you here because it is my
21 practice and as you pointed out it's appropriate that I did
22 not want to punish your client for your failure to comply
23 with the rules, or for your failure to do what you should
24 have done. This proceeding really did take a lot longer
25 than it would have been necessary. If I had fully

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1 apprehended the scope of your arguments, the nature of the
2 arguments, the nuisancal nature of what you were arguing I
3 would have had pictures before me in chambers to review so
4 that I could have made these decisions without the
5 painstaking production that we went through here. I will
6 only say you're obviously a very skillful lawyer. You know
7 the law, and for your client made the very best arguments
8 that you could possibly make.

9 Mr. SHULMAN: I apologize to the Court.

10 THE COURT: But your obligations to the Court fell
11 far short, far short.

12 Mr. SHULMAN: I understand.

13 THE COURT: All right.

14 This is in the matter of the United States of
15 America versus Donald Croft, criminal docket number 13-
16 20568.

17 With respect to Count Two of the Superseding
18 Information here it is the judgment of this Court after
19 considering the sentencing guidelines and the factors
20 contained in the sentencing statute that the defendant be
21 committed to the custody of the Bureau of Prisons for a
22 term of 120 months.

23 I pause here to note that for all of the reasons
24 that we've discussed here on the record even though is the
25 statutory maximum the Court believes that this is, in fact,

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1 a lenient sentence. The defendant could have been charged
2 with -- he was charged with, but could have been charged
3 with and gone to trial and been convicted of production
4 which would have incurred far greater sentences. So the
5 Court accepts his plea, but understands that even though
6 this is the statutory maximum it is in the larger context a
7 rather lenient sentence.

8 The Court recommends placement in a facility with
9 sex offender and mental health treatment.

10 Upon the defendant's release from custody the
11 defendant will be placed on supervised release for a term
12 of five years.

13 The Court will waive the imposition of a fine,
14 cost of incarceration, or cost of supervision due to the
15 defendant's lack of resources, financial resources.

16 The law, however, does require a special
17 assessment of \$100 for each count of conviction. There is
18 one count of conviction, therefore, a special assessment of
19 \$100 is due and owing.

20 Mandatory drug testing is ordered as the
21 defendant does have some history of substance abuse.

22 While on supervision the defendant will abide by
23 all of the standard conditions of supervised release which
24 have been adopted by this Court as well as the following
25 special conditions due to the nature of this offense.

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1 The defendant will participate in a program
2 approved by his probation officer for substance abuse which
3 may include testing to determine if he has reverted to the
4 use of drugs or alcohol because as I noted the defendant
5 does have some history of substance abuse.

6 The defendant will participate in a program
7 approved by his probation officer for mental health
8 counseling if his probation officer deems that necessary.

9 The defendant will submit to a psychological or
10 psychiatric evaluation as directed by his probation officer
11 if necessary.

12 The defendant will comply with the requirements
13 of the Sex Offender Registration and Notification Act as
14 directed by his probation officer, the United States Bureau
15 of Prisons or any state sexual offender registration agency
16 in which he resides, or is a student, or was convicted of a
17 qualifying offense.

18 The defendant shall successfully complete any sex
19 offender diagnostic evaluations, treatment/counseling
20 programs as directed by his probation officer. Reports
21 pertaining to sex offender assessments, treatment, and
22 polygraph examinations shall be provided to his probation
23 officer. Based on the defendant's ability to pay if he has
24 the ability to pay he shall pay the costs of these
25 diagnostic evaluations, treatment or counseling programs,

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1 in an amount to be determined by his probation officer.

2 The defendant shall be required to submit to
3 periodic polygraph testing at the discretion of his
4 probation officer as a means to ensure compliance with the
5 requirements of supervision or treatment. No violation
6 proceedings will arise solely on the bases of a polygraph
7 examination. Based on the defendant's ability to pay, the
8 defendant shall pay the cost of the polygraph examination
9 in an amount determined by his probation officer.

10 The defendant shall not have contact, either
11 directly or indirectly, with any victim or witness in this
12 instant offense, unless approved by his probation officer.

13 The defendant shall not associate with minor
14 children under the age of 18, except in the presence of a
15 responsible adult who is aware of the nature of the
16 defendant's background and current offense, and who has
17 been approved by his probation officer. The defendant shall
18 not frequent places where children congregate on a regular
19 basis such as, but not limited to, school grounds,
20 playgrounds, child toy stores, video arcades, et cetera.

21 The defendant shall notify anyone he dates or
22 marries with a minor child under the age of 18 of his
23 conviction.

24 The defendant shall not produce, purchase, sell,
25 view, or possess images, in any form of medica or live

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1 venue that depict pornography, sexually explicit conduct,
2 child erotica, or child nudity. The defendant shall not
3 patronize any place where such material or entertainment is
4 available.

5 The defendant shall provide his probation officer
6 with accurate information about all computer systems both
7 hardware and software, all passwords, and Internet Service
8 Providers, that the defendant has potential or reasonable
9 access to and abide by all rules of the United States
10 Probation Department's Computer Monitoring Program. The
11 defendant shall only access a computer approved by his
12 probation officer. The defendant shall consent to his
13 probation officer conducting periodic, unannounced
14 examinations of all computer systems, which may include
15 computer monitoring software at the defendant's expense.
16 For the purpose of accounting for all computers, hardware,
17 software and accessories, the defendant shall submit his or
18 her person, residence, computer and/or vehicle to a search
19 conducted by his probation officer at such a reasonable
20 times and manners as are provided. The defendant shall
21 inform any other residents that the premises and computers
22 may be subject to a search pursuant to this condition. The
23 defendant shall provide his probation officer with access
24 to any requested financial information including billing
25 records, (telephone, cable, internet, satellite, et

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1 cetera.)

2 The defendant shall only access the internet through
3 one-internet-capable device. All other internet capable
4 devices, such as cellular phones and gaming consoles, shall
5 not the internet connected. The defendant is prohibited
6 from accessing any online computer service at any location
7 including, but not limited to public libraries, internet
8 cafes, and places of employment or education without his
9 probation officer's permission.

10 The defendant shall not own or possess a camera,
11 photographic device, or any other equipment, including
12 video recording equipment, without prior approval of his
13 probation officer.

14 The defendant shall have employment pre-approved
15 by his probation officer. If the defendant's employment
16 requires the use of a computer, the defendant shall notify
17 the employer of the nature of his conviction and this
18 notification must be confirmed by his probation officer.

19 The defendant shall not be employed at or
20 participate in any volunteer activities that involve
21 contact with minors under the age of 18, or adults with
22 disabilities, without prior approval of his probation
23 officer.

24 The defendant shall not rent a post office box or
25 storage unit without the prior approval of his probation

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1 officer.

2 Mr. Croft, I have now accepted your plea, but you
3 did not plead guilty pursuant to a plea agreement.
4 Therefore, you have the right to appeal both your
5 conviction and your sentence. You have ten days to perfect
6 an appeal, and you are entitled to have counsel represent
7 you on appeal. If you request counsel I will be happy to
8 appoint one on your behalf. You may also represent yourself
9 if you wish to do so; however, I would strongly advise
10 against that. As we've seen in these proceedings today and
11 throughout it's a very complicated, sophisticated area of
12 the law, and you would be best served by having counsel
13 available rather than attempting to represent yourself.

14 All right. Sentence has now been imposed.

15 Is there any other matter including sentence that
16 counsel wish to address?

17 MR. ROTH: Does the Court wish the Government to
18 retain control of the exhibits or --

19 THE COURT: Yes.

20 MR. ROTH: Thank you, your Honor.

21 Mr. SHULMAN: No objections other than what's on
22 the record.

23 THE COURT: All right.

24 Thank you.

25 MR. ROTH: Thank you, your Honor.

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1 (Proceedings concluded, 4:10 p.m.)

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CERTIFICATE

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7 I, JOAN L. MORGAN, Official Court Reporter for the
8 United States District Court for the Eastern District of
9 Michigan, appointed pursuant to the provisions of Title 28,
10 United States Code, Section 753, do hereby certify that the
11 foregoing proceedings were had in the within entitled and
12 number cause of the date hereinbefore set forth, and I do
13 hereby certify that the foregoing transcript has been
14 prepared by me or under my direction.

15

16

S:/ JOAN L. MORGAN, CSR

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Official Court Reporter

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Detroit, Michigan 48226

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March 24th, 2015